

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARIE AMARDY-VAL,

Civ. Action No. CV-22-4653

Plaintiffs

-v-

JURY TRIAL DEMANDED

OLD NAVY, LLC,

Defendants.
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NOTICE OF REMOVAL OF CIVIL ACTION
PURSUANT TO 28 U.S.C. §1441

To the Clerk of the Above-Captioned Court:

Please take notice that Defendant, OLD NAVY, LLC (“Old Navy”), respectfully petitions this Court for removal of the above-captioned action from the Supreme Court of the State of New York, Kings County, to the United States District Court for the Eastern District of New York, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. As the basis for such removal, Defendants state as follows:

NATURE OF ACTION

1. On May 4, 2022, Plaintiff filed a Summons and Verified Complaint via the New York State Courts Electronic Filing (“NYCEF”) system. On May 13, 2022, Plaintiff served a Summons and Complaint upon the Secretary of State of the State of New York in order to effectuate service upon the Defendants. (A copy of the Summons and Complaint and Affidavit of Service is attached hereto as **Exhibit “A”**). On July 26, 2022, a Stipulation

Extending Time to Answer was signed by all parties extending defendant's time to Answer the Summons and Complaint until August 26, 2022. (A copy of the Stipulation Extending Time to Answer is annexed hereto as **Exhibit "B"**). On July 29, 2022, Old Navy filed an Answer to the Summons and Complaint via NYCEF. (A copy of Old Navy's Answer is attached hereto as **Exhibit "C"**). This constitutes all of the processes, pleadings and orders served in the above-captioned matter.

2. Plaintiff claims that on December 21, 2021, she became injured within an Old Navy store after tripping over a clothing rack. The cause of action is negligence.

3. The Notice of Removal is being filed within 30 days after receipt of the Stipulation Extending Time to Answer the Summons and Complaint. Thus, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

THE PARTIES' CITIZENSHIP

4. This Court has original jurisdiction over this case where the parties' citizenship is diverse and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. See 28 U.S.C. §1332(a).

5. Complete diversity exists because the citizenship of Plaintiff is completely diverse from the citizenship of Old Navy. Plaintiff is a New York State resident. Old Navy is a Delaware limited liability corporation. The Gap, Inc., is Old Navy's sole member. The Gap, Inc., is a Delaware Corporation with a principal place of business in California. Accordingly, Old Navy, pursuant to 28 U.S.C. §1332, is a citizen of Delaware and California State, and Old Navy is not a New York State citizen.

6. The amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. New York State practice does not permit Plaintiff to demand a specific sum. In response to Old Navy's Demand for Bill of Particulars, plaintiff is alleging \$79,500 in special damages, therefore, the amount of special damages in controversy exceeds \$75,000. In addition, plaintiff has not responded to our Stipulation to cap damages below \$75,000. Therefore, it is readily apparent that the jurisdictional amount in controversy is met.

7. Written notice of the filing of this Notice of Removal will be given to all parties, and a true and correct copy will be filed with the Clerk of the Supreme Court of the State of New York, Kings County, pursuant to 28 U.S.C. §1446(d).

8. By filing this Notice of Removal, Old Navy does not waive any of its rights regarding any defenses otherwise available to it, including, but not limited to, the defenses set forth in Rule 12 of the New York Rules of Procedure and Rule 12 of the Federal Rules of Civil Procedure.

WHEREFORE, Old Navy gives notice that the above-captioned action commenced against them in the Supreme Court of New York, Kings County, (Index No. 507045/2022) has been removed to this Court.

Dated: Melville, New York
August 8, 2022

Respectfully submitted,

/s/ Peter G. Prisco

McANDREW, CONBOY & PRISCO LLP

By: PETER G. PRISCO ESQ.

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